

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 380

Introduced by Assembly Member Wright

February 11, 1999

~~An act to amend Section 685.020 of, and to add Section 695.212 to, the Code of Civil Procedure, An act to amend Sections 3652, 3653, 3654, 7575, and 7642 of, to amend the heading of Chapter 6 (commencing with Section 3650) of Part 1 of Division 9 of, to add Sections 3651.5 and 7645 to, to add Article 4 (commencing with Section 3690) to Chapter 6 of Part 1 of Division 9 of, and to repeal Section 4071.5 of, the Family Code, to add Section 166.5 to the Penal Code, and to amend Sections 11350 and 11478.1 of, to add Sections 11350.01, 11350.02, 11350.61, 11350.63, 11350.85, 11356.5, 11358, 11475.12, 11475.17, and 11478.3 to the of, and to add Sections 11350.02, 11350.61, 11356.5, 11358, and 11475.12 to, the Welfare and Institutions Code, relating to support orders.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as amended, R. Wright. Support orders: modification: set aside: enforcement.

(1) ~~Existing law provides that, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.~~

~~This bill would, with respect to a money judgment or order for child support, prohibit the accrual of any installments, or any interest on any arrearages, of child support while the support obligor is incarcerated in a jail or correctional facility in excess of 90 days, subject to an exception, and would provide procedures for providing notice, determining arrearages, and recalculating arrearages in accordance with this provision.~~

~~(2) Existing law establishes procedures and time limits for granting a party relief from a default, judgment, dismissal, or other order on specified grounds in any civil action and for granting a party relief from a judgment, or any part thereof, on specified grounds in proceedings for dissolution or nullity of marriage or legal separation of the parties. Existing law also provides procedures for the modification or termination of child, family, and spousal support orders and the modification of orders determining the existence or nonexistence of the father and child relationship.~~

~~This bill would authorize the court to set aside a support order, or any part thereof, on the grounds of fraud, perjury, or lack of actual notice, or the interests of justice, as specified. It also and would establish procedures and time limits therefor and would authorize the recovery of attorneys' fees and compensatory and punitive damages in specified cases. The bill would also authorize and establish procedures for the court to set aside an order or judgment establishing paternity based on the results of genetic tests in specified circumstances.~~

~~(3) Under existing law, in proceedings in which child support is ordered to be paid to a parent receiving welfare moneys, the court is required, among other things, to direct the district attorney to appear on behalf of the welfare recipient in any enforcement proceedings.~~

~~This bill would provide that, in any case in which a parent has requested or is receiving support enforcement services of the district attorney and his or her whereabouts are unknown, the district attorney shall take all steps necessary to locate the parent, and would require any parent receiving those services to advise the district attorney of his or her current address. The bill would also require any notice of support delinquency~~

~~issued by a governmental agency to state the date on which the delinquency was calculated.~~

~~(4) Existing law authorizes a child support obligee to file and serve a notice of delinquency if the support obligation is more than 30 days in arrears, and authorizes the court to, among other things, assess specified penalties if the arrearage remains unpaid more than 30 days after the notice of delinquency is served. Existing law provides that the notice of delinquency may be served personally, by certified mail, or in any manner provided for service of summons.~~

~~This bill would limit the means of service of the notice of delinquency to personal service or certified mail with return receipt.~~

~~(5)~~

(2) Existing law provides that, for purposes of computing the minimum level of child support, no deduction from income shall be granted if specified aid payments are being made to the child or children of the parent seeking the deduction, even if the payments are being received by the other parent.

This bill would repeal that provision.

~~(6)~~

(3) In proceedings against an individual for failure to sufficiently provide for the support of his or her children or spouse, existing law authorizes the court to suspend the proceedings or sentence, at specified times in the proceedings, if the defendant enters into an undertaking conditioned upon the defendant paying support, as specified.

This bill would authorize the court, at those specified times in the proceedings and upon similar conditions, to suspend the proceedings or sentence in a contempt action against an individual for failure to comply with a court order for payment of child, family, or spousal support; ~~but would authorize the court to waive the provision of an undertaking in those circumstances.~~

~~(7)~~

(4) Existing law declares that, if a family is granted aid under the CalWORKs program as a result of the absence of a parent from the family home, the noncustodial parent shall

reimburse the county for specified amounts of unpaid support.

~~This bill would require the county to promptly notify the noncustodial parent, except in specified circumstances, that aid has been granted and that support reimbursement is required. The bill would also prohibit recovery by the county of any support for any period prior to the service of the complaint in an action to establish support.~~

~~(8)~~

(5) Existing law requires the district attorney, in specified child support cases, to provide to the Department of Social Services a list of persons who are not in compliance with a support order or judgment; which list is then provided by the department to all state boards that issue licenses, as defined, for the purpose of withholding issuance or renewal of any license to any person named on the list, until a release is issued by the district attorney. If a license applicant believes his or her name should be deleted from the list, existing law specifies procedures for judicial review of that issue in the superior court.

~~This bill would require licensing boards to process releases within 2 days after receipt and require that *authorize* the judicial review *to* be conducted by the municipal court, in counties in which there is a municipal court, if specified criminal proceedings are pending against the applicant in that court at the time review is sought.~~

~~(9)~~

(6) Existing law provides that an action may be brought by the district attorney to obtain or enforce a child support obligation on behalf of a parent who has requested or is receiving support enforcement services of the district attorney. In those actions, a default judgment may be entered against a defendant who fails to answer or otherwise appear within a specified time. Existing law also provides that when a parent makes an application for child support services, the applicant shall provide the district attorney with a statement of arrearages, if any are owed. Existing law provides procedures for the district attorney to review the amount of arrearages alleged in that statement.



This bill would establish, as of a specified date, procedures and remedies if a person claims that a default judgment has been entered, or enforcement actions have been taken, against him or her in error due to mistaken identity, as specified. Filing a false claim of mistaken identity would be punishable as a misdemeanor. If the district attorney rejects a person's claim of mistaken identity, or fails to provide the remedies specified, the bill would provide that the person would be entitled to file a court action to ~~recover actual damages, attorneys' fees and costs, and any other relief as the court deems just~~ *obtain that relief*. The bill would also impose additional requirements on district attorneys regarding service of process on defendants in support *establishment and* enforcement actions.

~~(10)~~

(7) The bill would declare that the act shall be referred to as the Child Support Enforcement Fairness Act of 2000 and would make related findings and declarations.

~~(11)~~

(8) Because this bill would create a new crime and would impose new duties on local personnel, it would create a state-mandated local program.

~~(12)~~

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be referred to as the
Child Support Enforcement Fairness Act of 2000.

(b) The Legislature finds and declares as follows:

(1) The efficient and fair enforcement of child support
orders is essential to ensuring compliance with those
orders and respect for the administration of justice.

(2) A large number of child support orders are
obtained by a default judgment. In one study by the
Judicial Council, more than 70 percent of all child support
orders studied were obtained by default judgment. Very
often, by the time a support obligor receives actual notice
of the support order, the accumulated amount of
arrearages totals tens of thousands of dollars. These
arrearages amounts, particularly for a low wage earner,
are a significant obstacle to good faith compliance.
Ensuring prompt, actual notice of a child support
obligation will prevent the accumulation of large
amounts of arrearages and encourage greater timely
compliance.

(3) Thousands of individuals each year are mistakenly
identified as being liable for child support actions. As a
result of that action, the ability to earn a living is severely
impaired, assets are seized, and family relationships are
often destroyed. It is the moral, legal, and ethical
obligation of all enforcement agencies to take prompt
action to recognize those cases where a person is
mistakenly identified as a support obligor in order to
minimize the harm and correct any injustice to that
person.

~~SEC. 2. Section 685.020 of the Code of Civil Procedure
is amended to read:~~

~~685.020. (a) Except as provided in subdivision (b)
and in Section 695.212, interest commences to accrue on
a money judgment on the date of entry of the judgment.~~

~~(b) Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.~~

~~SEC. 3. Section 695.212 is added to the Code of Civil Procedure, to read:~~

~~695.212. (a) Notwithstanding subdivision (a) of Section 695.211 or any other provision of law, no installments of child support shall become due, and no interest on any arrearages shall accrue, for any period of time in excess of 90 days during which the support obligor is incarcerated in any jail or correctional facility. This section shall be applicable to all installments of child support that become due on or after the effective date of this section, irrespective of the date of the judgment or order.~~

~~(b) Upon the entry of a prisoner into any jail or correctional facility, the prisoner shall be advised of the provisions of this section and the prisoner's right, under Section 11350.85 of the Welfare and Institutions Code, to have any child support obligations recalculated, if necessary to comply with this section.~~

~~(c) This section shall not apply if the support obligor, notwithstanding his or her incarceration, has continuing income or assets that may be attached or otherwise applied to satisfy his or her support obligations.~~

~~SEC. 4.~~

~~SEC. 2. The heading of Chapter 6 (commencing with Section 3650) of Part 1 of Division 9 of the Family Code is amended to read:~~

CHAPTER 6. MODIFICATION, TERMINATION, OR SET ASIDE
OF SUPPORT ORDERS

~~SEC. 5. Section 3651.5 is added to the Family Code, to read:~~

~~3651.5. In any proceeding pursuant to this chapter, if a parent has requested or is receiving support enforcement services of the district attorney and the whereabouts of that parent are not known, or there is~~

~~1 reason to believe that the parent may not appear in the
2 proceeding although ordered to personally appear, the
3 district attorney shall take all actions necessary to locate
4 the parent and to procure compliance with the order to
5 appear for purposes of modification, termination, or
6 setting aside the support order.~~

~~7 SEC. 6.~~

8 SEC. 3. Section 3652 of the Family Code is amended
9 to read:

10 3652. Except as against a governmental agency, an
11 order modifying, terminating, or setting aside a support
12 order may include an award of attorney's fees and court
13 costs to the prevailing party.

~~14 SEC. 7.~~

15 SEC. 4. Section 3653 of the Family Code is amended
16 to read:

17 3653. (a) An order modifying, terminating, or setting
18 aside a support order may be made retroactive to the date
19 of the filing of the notice of motion or order to show cause
20 to modify, terminate, or set aside, or to any subsequent
21 date, except as provided in subdivision (b) or by federal
22 law (42 U.S.C. Sec. 666(a)(9)).

23 (b) If an order modifying or terminating a support
24 order is entered due to the unemployment of either the
25 support obligor or the support obligee, the order shall be
26 made retroactive to the later of the date of the service on
27 the opposing party of the notice of motion or order to
28 show cause to modify or terminate or the date of
29 unemployment, subject to the notice requirements of
30 federal law (42 U.S.C. Sec. 666(a)(9)), unless the court
31 finds good cause not to make the order retroactive and
32 states its reasons on the record.

33 (c) If an order decreasing or terminating a support
34 order is entered retroactively pursuant to this section, the
35 support obligor shall nevertheless not be entitled to, and
36 the support obligee shall have no obligation to repay, any
37 amounts previously paid by the support obligor pursuant
38 to the prior order that are in excess of the amounts due
39 pursuant to the retroactive order.

~~40 SEC. 8.~~

1 SEC. 5. Section 3654 of the Family Code is amended
2 to read:

3 3654. At the request of either party, an order
4 modifying, terminating, or setting aside a support order
5 shall include a statement of decision.

6 ~~SEC. 9.~~

7 SEC. 6. Article 4 (commencing with Section 3690) is
8 added to Chapter 6 of Part 1 of Division 9 of the Family
9 Code, to read:

10
11 Article 4. Relief From Orders
12

13 3690. (a) The court may, on any terms that may be
14 just, relieve a party from a support order, or any part or
15 parts thereof, after the six-month time limit of Section 473
16 of the Code of Civil Procedure has run, based on the
17 grounds, and within the time limits, provided in this
18 article.

19 (b) In all proceedings under this division, before
20 granting relief, the court shall find that the facts alleged
21 as the grounds for relief materially affected the original
22 order and that the moving party would materially benefit
23 from the granting of the relief.

24 (c) Nothing in this article shall limit or modify the
25 provisions of Section 11356 or 11356.5 of the Welfare and
26 Institutions Code.

27 3691. The grounds and time limits for an action or
28 motion to set aside a support order, or any part or parts
29 thereof, are governed by this section and shall be one of
30 the following:

31 (a) Actual fraud. Where the defrauded party was kept
32 in ignorance or in some other manner, other than his or
33 her own lack of care or attention, was fraudulently
34 prevented from fully participating in the proceeding. An
35 action or motion based on fraud shall be brought within
36 six months after the date on which the complaining party
37 discovered *or reasonably should have discovered* the
38 fraud.

39 (b) Perjury. An action or motion based on perjury shall
40 be brought within six months after the date on which the

1 complaining party discovered *or reasonably should have*
2 *discovered* the perjury.

3 (c) Lack of ~~Actual~~ Notice.

4 (1) When service of a summons has not resulted in
5 notice to a party in time to defend the action for support
6 and a default or default judgment has been entered
7 against him or her in the action, he or she may serve and
8 file a notice of motion to set aside the default and for leave
9 to defend the action. The notice of motion shall be served
10 and filed within a reasonable time, but in no event later
11 than six months after the party obtains—~~actual~~ *or*
12 *reasonably should have obtained* notice (A) of the
13 support order, or (B) that the party's income and assets
14 are subject to attachment pursuant to the order.

15 (2) A notice of motion to set aside a support order
16 pursuant to this subdivision shall be accompanied by an
17 affidavit showing, under oath, that the party's lack of
18 ~~actual~~ notice in time to defend the action was not caused
19 by his or her avoidance of service or inexcusable neglect.
20 The party shall serve and file with the notice a copy of the
21 answer, motion, or other pleading proposed to be filed in
22 the action.

23 ~~(d) Interests of Justice. An action or motion to set aside~~
24 ~~a support order may be granted on any of the grounds~~
25 ~~specified in subdivision (a), (b), or (c), after the~~
26 ~~expiration of the time period specified in those~~
27 ~~subdivisions if the court finds, based on substantial~~
28 ~~evidence, that the interests of justice compel the granting~~
29 ~~of relief. An action or motion based on these grounds must~~
30 ~~be brought within six months following the occurrence of~~
31 ~~the events or the discovery of the facts that are alleged to~~
32 ~~compel the granting of relief.~~

33 ~~3692. If an action or motion to set aside a default with~~
34 ~~respect to a support order or judgment is granted~~
35 ~~pursuant to Section 473.5 of the Code of Civil Procedure~~
36 ~~or subdivision (c) of Section 3690, and the court finds that~~
37 ~~the lack of actual notice was the result of an intentionally~~
38 ~~or grossly negligent failure of the plaintiff to comply with~~
39 ~~the legal requirements regarding service of process, the~~
40 ~~moving party shall be entitled to recover his or her~~

~~attorneys' fees and costs and compensatory damages suffered as a result of the entry of the default or default judgment, and punitive damages in an amount not to exceed five thousand dollars (\$5,000).~~

(3) The court may not set aside or otherwise relieve a party from a support order pursuant to this subdivision if service of the summons was accomplished in accordance with existing requirements of law regarding service of process.

3692. Notwithstanding any other provision of this article, or any other law, a support order may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the support ordered to become excessive or inadequate.

3693. When ruling on an action or motion to set aside a support order, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court has discretion to set aside the entire order, if necessary, for equitable considerations.

~~SEC. 10.~~

SEC. 7. Section 4071.5 of the Family Code is repealed.

~~SEC. 11.~~

SEC. 8. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the State Department of Social Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Department of Social Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that

1 certifies that a copy of the rescission form was sent by any
2 form of mail requiring a return receipt to the other
3 person who signed the voluntary declaration of paternity.
4 A copy of the return receipt shall be attached to the
5 rescission form when filed with the State Department of
6 Social Services. The form and instructions shall be written
7 in simple, easy to understand language and shall be made
8 available at the local family support office and the office
9 of local registrar of births and deaths. The department
10 shall, upon written request, provide to a court or
11 commissioner a copy of any rescission form filed with the
12 department that is relevant to proceedings before the
13 court or commissioner.

14 (b) (1) Notwithstanding Section 7573, if the court
15 finds that the conclusions of all of the experts based upon
16 the results of the genetic tests performed pursuant to
17 Chapter 2 (commencing with Section 7550) are that the
18 man who signed the voluntary declaration is not the
19 father of the child, the court may set aside the voluntary
20 declaration of paternity.

21 (2) The notice of motion for genetic tests under this
22 section may be filed not later than two years from the date
23 of the child's birth by either the mother, the man who
24 signed the voluntary declaration as the child's father, or
25 in an action to determine the existence or nonexistence
26 of the father and child relationship pursuant to Section
27 7630 or in any action to establish an order for child
28 custody, visitation, or child support based upon the
29 voluntary declaration of paternity.

30 (3) The notice of motion for genetic tests pursuant to
31 this section shall be supported by a declaration under oath
32 submitted by the moving party stating the factual basis
33 for putting the issue of paternity before the court.

34 (c) (1) Nothing in this chapter shall be construed to
35 prejudice or bar the rights of either parent to file an
36 action or motion to set aside the voluntary declaration of
37 paternity on any of the grounds described in, and within
38 the time limits specified in, Section 473 of the Code of
39 Civil Procedure ~~or Section 7645~~. If the action or motion
40 to set aside the voluntary declaration of paternity is for

1 fraud or perjury, the act must have induced the
2 defrauded parent to sign the voluntary declaration of
3 paternity. If the action or motion to set aside a judgment
4 is required to be filed within a specified time period
5 under Section 473 of the Code of Civil Procedure—~~or~~
6 ~~Section 7645~~, the period within which the action or
7 motion to set aside the voluntary declaration of paternity
8 must be filed shall commence on the date that the court
9 makes a finding of paternity based upon the voluntary
10 declaration of paternity in an action for custody,
11 visitation, or child support.

12 (2) The parent seeking to set aside the voluntary
13 declaration of paternity shall have the burden of proof.

14 (3) Any order for custody, visitation, or child support
15 shall remain in effect until the court determines that the
16 voluntary declaration of paternity should be set aside,
17 subject to the court's power to modify the orders as
18 otherwise provided by law.

19 (4) Nothing in this section is intended to restrict a
20 court from acting as a court of equity.

21 (5) If the voluntary declaration of paternity is set aside
22 pursuant to paragraph (1), the court shall order that the
23 mother, child, and alleged father submit to genetic tests
24 pursuant to Chapter 2 (commencing with Section 7550).
25 If the court finds that the conclusions of all the experts, as
26 disclosed by the evidence based upon the genetic tests,
27 are that the person who executed the voluntary
28 declaration of paternity is not the father of the child, the
29 question of paternity shall be resolved accordingly. If the
30 person who executed the declaration as the father of the
31 child is not excluded as a possible father, the question of
32 paternity shall be resolved as otherwise provided by law.
33 If the person who executed the declaration of paternity
34 is ultimately determined to be the father of the child, any
35 child support that accrued under an order based upon the
36 voluntary declaration of paternity shall remain due and
37 owing.

38 (6) The Judicial Council shall develop the forms and
39 procedures necessary to effectuate this subdivision.

40 ~~SEC. 12.~~

1 SEC. 9. Section 7642 of the Family Code is amended
2 to read:

3 7642. The court has continuing jurisdiction to modify
4 or set aside a judgment or order made under this part. A
5 judgment or order relating to an adoption may only be
6 modified or set aside in the same manner and under the
7 same conditions as an order of adoption may be modified
8 or set aside under Section 9100 or 9102.

9 ~~SEC. 13. Section 7645 is added to the Family Code, to~~
10 ~~read:~~

11 ~~7645. (a) For purposes of this section, “previously~~
12 ~~established father” means a person identified as the~~
13 ~~father of a child in an order or judgment of the superior~~
14 ~~court in which the issue of paternity was, or could have~~
15 ~~been, raised.~~

16 ~~(b) Notwithstanding any other provision of law, the~~
17 ~~court may set aside a judgment or order made under this~~
18 ~~article, after the time limits of Sections 473 and 473.5 of~~
19 ~~the Code of Civil Procedure have run, as provided in this~~
20 ~~section.~~

21 ~~(c) A party may seek to set aside a judgment or order~~
22 ~~pursuant to this section only by a motion made~~
23 ~~subsequent to the entry of an order or judgment in which~~
24 ~~a person was identified as the father of a child and the~~
25 ~~issue of paternity was, or could have been, raised. If, at the~~
26 ~~hearing on the motion, the court finds that the~~
27 ~~conclusions of all of the experts based upon the results of~~
28 ~~genetic tests performed pursuant to Chapter 2~~
29 ~~(commencing with Section 7550) are that the previously~~
30 ~~established father is not the biological father of the child,~~
31 ~~the court may set aside the order or judgment~~
32 ~~establishing paternity.~~

33 ~~(d) A judgment or order may not be set aside pursuant~~
34 ~~to this section if any of the following conditions exist:~~

35 ~~(1) The judgment or order was entered following a~~
36 ~~trial or hearing at which the previously established father~~
37 ~~was present, knew that his paternity was or could be at~~
38 ~~issue, and failed to dispute his paternity or put his~~
39 ~~paternity at issue.~~

~~(2) The judgment or order was the result of a stipulation in open court after the parties were advised of their rights to a trial on the issue of paternity and to have genetic testing performed to determine biological parentage of the child and given notice that this testing would be paid for initially by the district attorney.~~

~~(e) A judgment or order may be set aside pursuant to this section only if all of the following conditions are satisfied:~~

~~(1) The motion to set aside the judgment or order shall be filed by the child, the child's natural mother, the previously established father, or any legal representative of any of these persons.~~

~~(2) The motion shall contain all of the following information, if known:~~

~~(A) The legal name, age, county of residence, and residence address of the child.~~

~~(B) The names, mailing addresses, and counties of residence of the child's natural mother, the previously established father, the alleged biological father of the child, and the guardian, custodian, or guardian ad litem, if any, of the child.~~

~~(C) A declaration that the person seeking the order to set aside the paternity judgment or order believes that the previously established father is not the biological father of the child and the specific reasons for that belief.~~

~~(f) A motion pursuant to this section shall be served on all of the following persons, if known, excluding the moving party, and proof of service shall be filed with the court:~~

~~(1) The natural mother of the child.~~

~~(2) The previously established father of the child.~~

~~(3) The child.~~

~~(4) The district attorney, if services are being provided to the child pursuant to Subtitle D (commencing with Section 450) or Subtitle E (commencing with Section 650) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 and Sec. 670 et seq.).~~

~~(g) A guardian ad litem shall be appointed for the child to represent the best interest of the child.~~

~~(h) Any genetic testing used to support the motion to set aside the paternity judgment or order shall be conducted in accordance with Chapter 2 (commencing with Section 7570) of Part 2. The court shall, at the request of any person specified in subdivision (f) or upon its own motion, order additional genetic testing to confirm any prior test upon which an expert has concluded that the previously established father is not the biological father of the child.~~

~~(i) If the court finds that the conclusions of all of the experts based upon the results of genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the previously established father is not the biological father of the child, the court may, nevertheless, deny the motion if it determines that denial of the motion is in the child's best interest, after consideration of the following factors:~~

~~(1) The age of the child.~~

~~(2) The length of time since the entry of the judgment or order establishing paternity.~~

~~(3) The length of time since the person bringing the motion knew, or should have known, the facts specified in subparagraph (C) of paragraph (4) of subdivision (e).~~

~~(4) The nature, duration, and quality of any relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship.~~

~~(5) The request of the previously established father that the parent-child relationship continue.~~

~~(6) Notice by the biological father of the child that he does not oppose preservation of the relationship between the previously established father and the child.~~

~~(7) The benefit or detriment to the child in establishing the child's biological parentage.~~

~~(8) Whether the previously established father was led to believe he was the biological father due to fraud or~~

1 ~~deceit by the mother or lack of knowledge regarding~~
2 ~~genetic testing.~~

3 ~~(9) Additional factors deemed by the court to be~~
4 ~~relevant to its determination of the child's best interest.~~

5 ~~(k) This section shall not be construed as a basis for~~
6 ~~termination of any adoption, nor shall it affect any~~
7 ~~obligation of an adoptive parent to an adoptive child.~~

8 ~~(l) Unless specifically addressed in an order granting~~
9 ~~a motion brought pursuant to this section, all prior orders~~
10 ~~granting custody or visitation to a previously established~~
11 ~~father shall be terminated by the order granting the~~
12 ~~motion to set aside the parentage order or judgment.~~

13 ~~(m) All prior orders or judgments directing the~~
14 ~~previously established father to provide support to the~~
15 ~~child, all accrued obligations and arrearages thereunder,~~
16 ~~and all enforcement actions in connection therewith,~~
17 ~~shall be terminated by the order granting the motion to~~
18 ~~set aside the parentage order or judgment. The~~
19 ~~previously established father shall have no right to~~
20 ~~reimbursement for any amounts of support paid prior to~~
21 ~~the granting of the motion.~~

22 ~~(n) Participation of the district attorney in a motion~~
23 ~~brought under this section shall be limited as follows:~~

24 ~~(1) The district attorney shall participate in the~~
25 ~~proceeding only if he or she is providing services specified~~
26 ~~in Subtitle D (commencing with Section 450) of Title IV~~
27 ~~of the federal Social Security Act (42 U.S.C. Sec. 650 et~~
28 ~~seq.) at the time the motion is filed or heard.~~

29 ~~(2) When the district attorney participates in a~~
30 ~~proceeding under this section, he or she may obtain an~~
31 ~~administrative order for genetic tests, as specified in~~
32 ~~Section 7558.~~

33 ~~(3) The district attorney shall not be responsible for~~
34 ~~the costs of genetic testing when performed in~~
35 ~~connection with a proceeding under this section, nor is~~
36 ~~the district attorney required to provide for, or assist in,~~
37 ~~genetic testing in any case in which he or she is not~~
38 ~~providing those services described in paragraph (1).~~

39 ~~SEC. 14.~~

1 *SEC. 10.* Section 166.5 is added to the Penal Code, to
2 read:

3 166.5. (a) After arrest and before plea or trial or after
4 conviction or plea of guilty and before sentence under
5 paragraph (4) of subdivision (a) of Section 166, for willful
6 disobedience of any order for child, spousal, or family
7 support issued pursuant to Division 9 (commencing with
8 Section 3500) of the Family Code, the court may suspend
9 proceedings or sentence therein if:

10 (1) The defendant appears before the court and
11 affirms his or her obligation to pay to the person having
12 custody of the child, or the spouse, that sum per month
13 as shall have been previously fixed by the court in order
14 to provide for the minor child or the spouse.

15 (2) The defendant provides a bond or other
16 undertaking with sufficient sureties to the people of the
17 State of California in a sum as the court may fix to secure
18 the defendant's performance of his or her support
19 obligations and that bond or undertaking is valid and
20 binding for two years, or any lesser time that the court
21 ~~shall fix. The court may, in its discretion, waive provision~~
22 ~~by the defendant of the bond or other undertaking~~
23 ~~described in this paragraph.~~ *shall fix.*

24 (b) Upon the failure of the defendant to comply with
25 the conditions imposed by the court in subdivision (a),
26 the defendant may be ordered to appear before the court
27 and show cause why further proceedings should not be
28 had in the action or why sentence should not be imposed,
29 whereupon the court may proceed with the action, or
30 pass sentence, or for good cause shown may modify the
31 order and take a new bond or undertaking and further
32 suspend proceedings or sentence for a like period.

33 ~~SEC. 15.~~

34 *SEC. 11.* Section 11350 of the Welfare and Institutions
35 Code is amended to read:

36 11350. (a) In any case of separation or desertion of a
37 parent or parents from a child or children that results in
38 aid under this chapter being granted to that family, the
39 noncustodial parent or parents shall be obligated to the
40 county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction.

(2) The obligation shall be reduced by any amount actually paid by the parent directly to the custodian of the child or to the district attorney of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The district attorney shall take appropriate action pursuant to this section as provided in subdivision (l) of Section 11475.1. The district attorney may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The parents shall pay the amount of support specified in the support order to the district attorney.

~~SEC. 16. Section 11350.01 is added to the Welfare and Institutions Code, to read:~~

~~11350.01. In any case of a continued absence of a parent from the home, as described in subdivision (c) of Section 11250, that results in aid under this chapter being granted to the family, the county welfare department shall promptly notify the noncustodial parent or parents, at the parent's last known address, that aid has been granted and that the noncustodial parent or parents shall be obligated to the county for the amounts specified in Section 11350. This section shall not apply in any case where the custodial parent has been determined to have good cause for noncooperation pursuant to Section 11477.04.~~

~~SEC. 17.~~

~~SEC. 12. Section 11350.02 is added to the Welfare and Institutions Code, to read:~~

~~11350.02. Notwithstanding any other provision of law, in any action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1 to establish child support, the amount of the judgment or order shall not include, and the district attorney shall not be authorized to collect, any amount of support for any period prior to the date of service of the complaint in the action.~~

1 ~~SEC. 18.~~

2 ~~SEC. 13.~~ Section 11350.61 is added to the Welfare and
3 Institutions Code, to read:

4 11350.61. The order to show cause or notice of motion
5 described in subdivision (j) of Section 11350.6 shall be
6 filed and heard in the superior court. If, however,
7 criminal proceedings pursuant to paragraph (4) of
8 subdivision (a) of Section 166 of the Penal Code, relating
9 to a support order, or pursuant to Section 270 of the Penal
10 Code are pending against the applicant in the municipal
11 court, in a county in which there is a municipal court, ~~the~~
12 ~~an~~ order to show cause or notice of motion ~~shall for~~
13 ~~judicial review of the district attorney's decision not to~~
14 ~~issue a release~~ may be filed and heard in that court.

15 ~~SEC. 19.~~ Section 11350.63 is added to the Welfare and
16 Institutions Code, to read:

17 11350.63. Any board that has received a release
18 pursuant to Section 11350.6 shall process the release
19 within two business days after receipt.

20 ~~SEC. 20.~~ Section 11350.85 is added to the Welfare and
21 Institutions Code, to read:

22 11350.85. (a) In conducting the review of the
23 statement of arrearages described in Section 11350.8, the
24 district attorney shall make reasonable efforts to
25 determine if the support obligor is incarcerated in any jail
26 or correctional facility. The statement of arrearages
27 provided by the applicant for child support services
28 described in Section 11350.9 shall contain a statement
29 whether, to the best of the applicant's knowledge, the
30 support obligor is or has been incarcerated in any jail or
31 correctional facility for a period of 90 days or longer.

32 (b) If it is determined that the support obligor is or has
33 been incarcerated in any jail or correctional facility for a
34 period of 90 days or longer, any installments of support
35 and any accrued interest on any support arrearages shall
36 be calculated, or adjusted, according to Section 695.212 of
37 the Code of Civil Procedure.

38 (c) The district attorney shall provide a simplified
39 form to enable a support obligor who is incarcerated in a
40 jail or correctional facility to request a recalculation of his

~~or her support arrearages based on Section 695.212 of the Code of Civil Procedure.~~

~~(d) If the district attorney determines that the support obligor is entitled to a reduction in the amount of support arrearages based on Section 695.212 of the Code of Civil Procedure, the district attorney shall, on its own motion, obtain an order of the court making that adjustment.~~

~~SEC. 21.~~

SEC. 14. Section 11356.5 is added to the Welfare and Institutions Code, to read:

11356.5. In any action in which a judgment or order for support was entered after the entry of the default of the defendant under Section 11355, the court shall relieve the defendant from that judgment or order if the defendant establishes that he or she was mistakenly identified in the order or in any subsequent documents or proceedings as the person having an obligation to provide support. The defendant shall also be entitled to the remedies specified in subdivisions (d) and (e) of Section 11358 with respect to any actions taken to enforce that judgment or order.

~~SEC. 22.~~

SEC. 15. Section 11358 is added to the Welfare and Institutions Code, to read:

11358. (a) Notwithstanding any other provision of law, this section shall apply to any actions taken to enforce a judgment or order for support entered as a result of action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, where it is alleged that the enforcement actions have been taken in error against a person who is not the support obligor named in the judgment or order.

(b) Any person claiming that any support enforcement actions have been taken against that person, or his or her wages or assets, in error, shall file a claim of mistaken identity with the district attorney. The claim shall include verifiable information or documentation to establish that the person against whom the enforcement actions have been taken is not the person named in the support order or judgment. The claim shall be filed on a

1 form established by the Judicial Council that shall specify,
2 immediately above the signature line, that the filing of a
3 false claim shall be punishable as a misdemeanor. A copy
4 of the claim form shall be date stamped by the office of
5 the district attorney and shall be returned to the claimant.

6 (c) The district attorney shall immediately investigate
7 any claim of mistaken identity and shall resolve the claim
8 within 30 days unless exceptional circumstances prevent
9 a resolution within that time. The district attorney shall
10 provide the claimant with a written statement of the
11 district attorney's conclusions, or a statement explaining
12 the exceptional circumstances that have delayed the
13 district attorney's conclusions and an estimated date
14 when conclusions will be reached, within that 30-day
15 period.

16 (d) If the district attorney determines that a claim
17 filed pursuant to this section is meritorious, or if the court
18 enters an order pursuant to Section 11356.5, the district
19 attorney shall immediately take the steps necessary to
20 terminate all enforcement activities with respect to the
21 claimant, to return to the claimant any assets seized, to
22 terminate any levying activities or attachment or
23 assignment orders, to release any license renewal or
24 application being withheld pursuant to Section 11350.6, to
25 return any sums paid by the claimant pursuant to the
26 judgment or order, including sums paid to any federal,
27 state, or local government, but excluding sums paid
28 directly to the support obligee, and to ensure that all
29 other enforcement agencies and entities cease further
30 actions against the claimant. With respect to a claim filed
31 under this section, the district attorney shall also provide
32 the claimant with a statement certifying that the claimant
33 is not the support obligor named in the support order or
34 judgment, which statement shall be prima facie evidence
35 of the claimant's identity in any subsequent enforcement
36 proceedings or actions with respect to that support order
37 or judgment.

38 (e) If the district attorney rejects a claim pursuant to
39 this section, or if the district attorney, after finding a claim
40 to be meritorious, fails to take any of the remedial steps

provided in subdivision (d), the claimant may file an action with the superior court to establish his or her mistaken identity or to obtain the remedies described in subdivision (d), or both. ~~If the claimant is the prevailing party in that action, he or she shall be entitled, in addition to the relief described in subdivision (d), to recover actual damages, according to proof, his or her attorneys' fees and costs, and any other relief as the court, in its discretion, deems just. Liability under this subdivision shall not be limited by the provisions of Chapter 1 (commencing with Section 814) of Division 3.6 of Title 4 of the Government Code. subdivision (d), or both.~~

(f) Filing a false claim pursuant to this section shall be a misdemeanor.

(g) The Judicial Council shall develop forms for use pursuant to this section.

(h) This section shall become operative on April 1, 2000.

~~SEC. 23.~~

~~SEC. 16.~~ Section 11475.12 is added to the Welfare and Institutions Code, to read:

11475.12. If the parent who ~~has requested~~ *is receiving* support enforcement services provides to the district attorney substantial, credible, information regarding the residence or work address of the support obligor, the district attorney shall initiate an *establishment or* enforcement action and serve the defendant within 60 days and inform the parent in writing when those actions have been taken. If the address or any other information provided by the support obligee is determined by the district attorney to be inaccurate and if, after reasonable diligence, the district attorney is unable to locate and serve the support obligor within that 60-day period, the district attorney shall inform the support obligee in writing of those facts. The requirements of this section shall be in addition to the time standards established by the State Department of Social Services pursuant to subdivision (k) of Section 11475.1.

~~SEC. 24.~~ ~~Section 11475.17 is added to the Welfare and Institutions Code, to read:~~

~~11475.17. In any case in which any governmental agency, or any subdivision or department thereof, issues a notice of support delinquency, that notice shall state on its face the date on which the delinquency was calculated.~~

~~SEC. 25.~~

SEC. 17. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper,

1 document, or record, or the information contained
2 therein, except as expressly authorized by this section.

3 (2) In no case shall information be released or the
4 whereabouts of one party or the child disclosed to another
5 party, or to the attorney of any other party, if a protective
6 order has been issued by a court or administrative agency
7 with respect to the former party, a good cause claim
8 under Section 11477.04 has been approved or is pending,
9 or the public agency responsible for establishing
10 paternity or enforcing support has reason to believe that
11 the release of the information may result in physical or
12 emotional harm to the former party or the child.

13 (3) Notwithstanding any other provision of law, a
14 proof of service filed by the district attorney shall not
15 disclose the address where service of process was
16 accomplished. Instead, the district attorney shall keep the
17 address in his or her own records. The proof of service
18 shall specify that the address is on record at the district
19 attorney's office and that the address may be released
20 only upon an order from the court pursuant to paragraph
21 (6) of subdivision (c). The district attorney shall, upon
22 request by a party served, release to that person the
23 address where service was effected.

24 (c) Disclosure of the information described in
25 subdivision (b) is authorized as follows:

26 (1) All files, applications, papers, documents and
27 records as described in subdivision (b) shall be available
28 and may be used by a public entity for all administrative,
29 civil, or criminal investigations, actions, proceedings, or
30 prosecutions conducted in connection with the
31 administration of the child and spousal support
32 enforcement program approved under Part D
33 (commencing with Section 651) of Subchapter IV of
34 Chapter 7 of Title 42 of the United States Code, and any
35 other plan or program described in Section 303.21 of Title
36 45 of the Code of Federal Regulations and to the county
37 welfare department responsible for administering a
38 program operated under a state plan pursuant to Subpart
39 1 or 2 or Part B or Part E of Subchapter IV of Chapter 7
40 of Title 42 of the United States Code.

1 (2) A document requested by a person who wrote,
2 prepared, or furnished the document may be examined
3 by or disclosed to that person or his or her designee.

4 (3) The payment history of an obligor pursuant to a
5 support order may be examined by or released to the
6 court, the obligor, or the person on whose behalf
7 enforcement actions are being taken or that person's
8 designee.

9 (4) Income and expense information of either parent
10 may be released to the other parent for the purpose of
11 establishing or modifying a support order.

12 (5) Public records subject to disclosure under the
13 Public Records Act (Chapter 3.5 (commencing with
14 Section 6250) of Division 7 of the Government Code) may
15 be released.

16 (6) After a noticed motion and a finding by the court,
17 in a case in which establishment or enforcement actions
18 are being taken, that release or disclosure to the obligor
19 or obligee is required by due process of law, the court may
20 order a public entity that possesses an application, paper,
21 document, or record as described in subdivision (b) to
22 make that item available to the obligor or obligee for
23 examination or copying, or to disclose to the obligor or
24 obligee the contents of that item. Article 9 (commencing
25 with Section 1040) of Chapter 4 of Division 3 of the
26 Evidence Code shall not be applicable to proceedings
27 under this part. At any hearing of a motion filed pursuant
28 to this section, the court shall inquire of the district
29 attorney and the parties appearing at the hearing if there
30 is reason to believe that release of the requested
31 information may result in physical or emotional harm to
32 a party. If the court determines that harm may occur, the
33 court shall issue any protective orders or injunctive
34 orders restricting the use and disclosure of the
35 information as are necessary to protect the individuals.

36 (7) To the extent not prohibited by federal law or
37 regulation, information indicating the existence or
38 imminent threat of a crime against a child, or location of
39 a concealed, detained, or abducted child or the location
40 of the concealing, detaining, or abducting person, may be

1 disclosed to any district attorney, any appropriate law
2 enforcement agency, or to any state or county child
3 protective agency, or may be used in any judicial
4 proceedings to prosecute that crime or to protect the
5 child.

6 (8) The social security number, most recent address,
7 and the place of employment of the absent parent may be
8 released to an authorized person as defined in Section
9 653(c) of Title 42 of the United States Code, only if the
10 authorized person has filed a request for the information,
11 and only if the information has been provided to the
12 California Parent Locator Service by the federal Parent
13 Locator Service pursuant to Section 653 of Title 42 of the
14 United States Code.

15 (d) (1) “Administration and implementation of the
16 child and spousal support enforcement program,” as used
17 in this section, means the carrying out of the state and
18 local plans for establishing, modifying, and enforcing
19 child support obligations, enforcing spousal support
20 orders, and determining paternity pursuant to Part D
21 (commencing with Section 651) of Subchapter IV of
22 Chapter 7 of Title 42 of the United States Code and this
23 article.

24 (2) For purposes of this section, “obligor” means any
25 person owing a duty of support.

26 (3) As used in this chapter, “putative parent” shall
27 refer to any person reasonably believed to be the parent
28 of a child for whom the district attorney is attempting to
29 establish paternity or establish, modify, or enforce
30 support pursuant to Section 11475.1.

31 (e) Any person who willfully, knowingly, and
32 intentionally violates this section is guilty of a
33 misdemeanor.

34 (f) Nothing in this section shall be construed to compel
35 the disclosure of information relating to a deserting
36 parent who is a recipient of aid under a public assistance
37 program for which federal aid is paid to this state, if that
38 information is required to be kept confidential by the
39 federal law or regulations relating to the program.

1 ~~SEC. 26. Section 11478.3 is added to the Welfare and~~
2 ~~Institutions Code, to read:~~

3 ~~11478.3. The notice described in subdivision (c) of~~
4 ~~Section 11478.2 shall also advise the person requesting~~
5 ~~services or on whose behalf services have been requested~~
6 ~~that it shall be that person's obligation to keep the district~~
7 ~~attorney or Attorney General advised, at all times, of the~~
8 ~~person's current home or other address where the person~~
9 ~~can regularly be found for purposes of receiving service~~
10 ~~of process.~~

11 ~~SEC. 27.~~

12 ~~SEC. 18. No reimbursement is required by this act~~
13 ~~pursuant to Section 6 of Article XIII B of the California~~
14 ~~Constitution for certain costs that may be incurred by a~~
15 ~~local agency or school district because in that regard this~~
16 ~~act creates a new crime or infraction, eliminates a crime~~
17 ~~or infraction, or changes the penalty for a crime or~~
18 ~~infraction, within the meaning of Section 17556 of the~~
19 ~~Government Code, or changes the definition of a crime~~
20 ~~within the meaning of Section 6 of Article XIII B of the~~
21 ~~California Constitution.~~

22 ~~However, notwithstanding Section 17610 of the~~
23 ~~Government Code, if the Commission on State Mandates~~
24 ~~determines that this act contains other costs mandated by~~
25 ~~the state, reimbursement to local agencies and school~~
26 ~~districts for those costs shall be made pursuant to Part 7~~
27 ~~(commencing with Section 17500) of Division 4 of Title~~
28 ~~2 of the Government Code. If the statewide cost of the~~
29 ~~claim for reimbursement does not exceed one million~~
30 ~~dollars (\$1,000,000), reimbursement shall be made from~~
31 ~~the State Mandates Claims Fund.~~